

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA

v.

MITZI BICKERS

Criminal Indictment No.

1:18-CR-98-SCJ-LTW

**GOVERNMENT’S PROPOSED JURY INSTRUCTIONS AND
PROPOSED SPECIAL VERDICT FORM FOR FORFEITURE PHASE**

In the event that the defendant, Mitzi Bickers, is convicted of a violation of Counts One through Ten of the Superseding Indictment, the United States hereby submits the following Proposed Jury Instructions and a Proposed Special Verdict Form, pursuant to Federal Rule of Criminal Procedure 32.2(b)(5)(B).

Respectfully submitted,

KURT R. ERSKINE

United States Attorney

/s/KELLY K. CONNORS

Assistant United States Attorney

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GOVERNMENT'S FORFEITURE REQUEST TO CHARGE NO. 1

T6

Forfeiture Proceedings

(To be given before supplemental evidentiary proceedings or
Supplemental arguments of counsel)

Members of the Jury: Your verdict in this case doesn't complete your jury service as it would in most cases because there is another matter you must now consider.

You must decide whether the Defendant, MITZI BICKERS, should forfeit certain property to the United States as a part of the penalty for the crimes charged in Counts One through Ten of the Indictment.

In a portion of the indictment not previously discussed or disclosed to you, it is alleged that certain property constitutes, or was derived from, the proceeds the Defendant obtained, directly or indirectly, as the result of the commission of the offenses charged in Counts One through Three and Seven through Ten of the Indictment and that certain property was involved in or traceable to the offenses charged in Counts Four through Six of the Indictment. In view of your verdict finding the Defendant guilty of those offenses, you must also decide, under the law I will now explain to you, whether such property should be forfeited to the United States.

To "forfeit" a thing is to be divested or deprived of the ownership of it as a part of the punishment allowed by the law for certain criminal offenses.

To decide whether property should be forfeited, you should consider all the evidence you have already heard plus any additional evidence that will be presented to you after these instructions.

A copy of the forfeiture allegations of the indictment will be given to you to consider during your supplemental deliberations. It describes in particular the property allegedly subject to forfeiture to the United States, that is, specifically,

- (a) The real property located at 3306 Bay View Drive, Jonesboro, Georgia;
- (b) 2014 GMC Acadia Denali, bearing VIN 1GKKRTKD8EJ138259;
- (c) 2014 Yamaha WaveRunner, model VX1800A-NB, US-YAMA3116J314;
- (d) 2013 Yamaha WaveRunner, model SJ700, JP-YAMH0089E313;
- (e) 2013 Yamaha WaveRunner, model GX1800A, US-YAMA3940D313;
- (f) 2014 Yamaha WaveRunner, model FA 1800-N, US-YAMA1141L31; and
- (g) 1964 Cadillac DeVille, bearing VIN 64F14244B.

To be entitled to the forfeiture, the Government must have proved by a preponderance of the evidence that each property is subject to forfeiture under one of the following theories:

a) that the property constitutes, or was derived from, the proceeds the Defendant obtained, directly or indirectly, as the result of the offenses charged in Counts One through Three and Counts Seven through Ten; or

b) that the property was involved in or traceable to the offenses charged in Counts Four through Six of the Indictment.

“Proceeds” means property of any kind obtained directly or indirectly, as the result of the commission of the offense, and any property traceable thereto, and is not limited to the net gain or profit realized from the offense.

To be “derived” from something means that the property under consideration must have been formed or developed out of the original source so as to be directly descended from that source.

To be “traceable” to something means that the property under consideration must have followed an ascertainable course or trail in successive stages of development or progress from the original source.

“Property involved” in a money laundering offense includes the property that is the subject of the financial transaction upon which the conviction is based and the property that facilitated that offense. Property subject to criminal forfeiture includes tangible and intangible personal property, including rights, privileges and interest.

With one important exception, all of my previous instructions will continue to apply to these deliberations. That exception is that during this phase the Government’s burden is not proof beyond a reasonable doubt, but instead, is proof by a preponderance of the evidence.

A “preponderance of the evidence” simply means an amount of evidence that is enough to persuade you that a claim or contention is more likely true than not true. You will use “a preponderance of the evidence” while deliberating in connection with the forfeiture of the property.

While deliberating concerning the issue of forfeiture you must not re-examine your previous determination regarding the Defendant’s guilt. But all the instructions previously given to you concerning your consideration of the evidence, the credibility of the witnesses, your duty to deliberate together, your

duty to base your verdict solely on the evidence without prejudice, bias, or sympathy, and the necessity of a unanimous verdict, will continue to apply during these supplemental deliberations.

What happens to any property declared forfeited is exclusively a matter for the Court to decide. Consequently, you should not consider what might happen to the property in determining whether the property is subject to forfeiture. In connection with this issue, you should disregard any claims that other persons may have to the property. The Court will take interests that other persons may have in the property into account at a later time.

To summarize, your task now is to decide whether the Government has shown by a preponderance of the evidence that property is subject to forfeiture in this case and if so, why that property is forfeitable. To resolve both of these matters, you will use the special verdict form that the Court will supply.

You will see that the special verdict form asks you to consider separately whether certain property is subject to forfeiture for more than one reason. If you find that a given property is subject to forfeiture for more than one reason, it does not necessarily mean that the Government will receive forfeited property twice. You must indicate on the special verdict form all of the bases on which you find any given property subject to forfeiture. Any issue relating to double counting will be considered by the Court during sentencing.

You will take the verdict form to the jury room. When you have reached unanimous agreement on the forfeiture verdict, have your foreperson fill in the blanks, date and sign the verdict form, then return to the Courtroom.

If you should desire to communicate with me at any time, please write down your message or question and pass the note to the marshal who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you returned to the courtroom so that I can address you orally. I caution you, however, with regard to any message or question you might send, that you should not tell me your numerical division at the time.¹

¹ *Eleventh Circuit Pattern Jury Instructions* (Criminal Cases) 2016, Trial Instruction 6 at 687-691(modified); 21 U.S.C. § 981(a)(1)(C); 21 U.S.C. § 982(a)(1); 28 U.S.C. § 2461(c); see FED. R. CRIM. P. 32.2(b)(1)(A); *United States v. Cabeza*, 258 F.3d 1256, 1258 (11th Cir. 2001) (holding that post-*Apprendi* burden on forfeiture remains a preponderance); *United States v. Elgersma*, 971 F.2d 690, 697 (11th Cir. 1992); *United States v. Furtcher*, 411 F.3d 377 (2d Cir. 2005) (finding that *Booker* and *Blakely* do not apply to forfeiture issues); *Libretti v. United States*, 516 U.S. 29 (1995); *United States v. Kennedy*, 201 F.3d 1324 (11th Cir. 2000) (considering property that is the subject of the money laundering transaction is involved in that transaction); *United States v. Hawkey*, 148 F.3d 920, 928 (8th Cir. 1998)(defining “property involved” and “property traceable to”); *United States v. Bornfield*, 145 F.3d 1123, 1135 (10th Cir. 1998) (noting that property “‘involved in’ an offense ‘include[s] the money or other property being laundered (the corpus), any commissions or fees paid to the launderer, and any property used to facilitate the laundering offense’”).

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Criminal Action No.

1:18-CR-98-SCJ-LTW

SPECIAL VERDICT FORM FOR FORFEITURE

We, the jury, return the following special verdict as to the following property:

I. PROCEEDS OF THE OFFENSES

- a. That, by a preponderance of the evidence, the following monies and/or properties constitute, or were derived from, proceeds obtained, directly or indirectly, as a result of a violation of the conspiracy to commit bribery offense charged in Count One of the Indictment (mark all that apply):

_____ The real property located at 3306 Bay View Drive, Jonesboro, Georgia.

_____ 2014 GMC Acadia Denali, bearing VIN 1GKKRTKD8EJ138259.

_____ 2014 Yamaha WaveRunner, model VX1800A-NB, US-YAMA3116J314.

_____ 2013 Yamaha WaveRunner, model SJ700, JP-YAMH0089E313.

_____ 2013 Yamaha WaveRunner, model GX1800A, US-YAMA3940D313.

_____ 2014 Yamaha WaveRunner, model FA 1800-N, US-

YAMA1141L314.

_____ 1964 Cadillac DeVille, bearing VIN 64F14244B.

- b. That, by a preponderance of the evidence, the following monies and/or properties constitute, or were derived from, proceeds obtained, directly or indirectly, as a result of a violation of the conspiracy to commit bribery offense charged in Count Two of the Indictment (mark all that apply):

_____ The real property located at 3306 Bay View Drive, Jonesboro, Georgia.

_____ 2014 GMC Acadia Denali, bearing VIN 1GKKRTKD8EJ138259.

_____ 2014 Yamaha WaveRunner, model VX1800A-NB, US-YAMA3116J314.

_____ 2013 Yamaha WaveRunner, model SJ700, JP-YAMH0089E313.

_____ 2013 Yamaha WaveRunner, model GX1800A, US-YAMA3940D313.

_____ 2014 Yamaha WaveRunner, model FA 1800-N, US-YAMA1141L314.

_____ 1964 Cadillac DeVille, bearing VIN 64F14244B.

- c. That, by a preponderance of the evidence, the following monies and/or properties constitute, or were derived from, proceeds obtained, directly

or indirectly, as a result of a violation of the bribery offense charged in Count Three of the Indictment (mark all that apply):

- ☐ The real property located at 3306 Bay View Drive, Jonesboro, Georgia.
- ☐ 2014 GMC Acadia Denali, bearing VIN 1GKKRTKD8EJ138259.
- ☐ 2014 Yamaha WaveRunner, model VX1800A-NB, US-YAMA3116J314.
- ☐ 2013 Yamaha WaveRunner, model SJ700, JP-YAMH0089E313.
- ☐ 2013 Yamaha WaveRunner, model GX1800A, US-YAMA3940D313.
- ☐ 2014 Yamaha WaveRunner, model FA 1800-N, US-YAMA1141L314.
- ☐ 1964 Cadillac DeVille, bearing VIN 64F14244B.

d. That, by a preponderance of the evidence, the following monies and/or properties constitute, or were derived from, proceeds obtained, directly or indirectly, as a result of a violation of the wire fraud offense charged in Count Seven of the Indictment (mark all that apply):

- ☐ The real property located at 3306 Bay View Drive, Jonesboro, Georgia.
- ☐ 2014 GMC Acadia Denali, bearing VIN 1GKKRTKD8EJ138259.
- ☐ 2014 Yamaha WaveRunner, model VX1800A-NB, US-YAMA3116J314.

_____ 2013 Yamaha WaveRunner, model SJ700, JP-YAMH0089E313.

_____ 2013 Yamaha WaveRunner, model GX1800A, US-
YAMA3940D313.

_____ 2014 Yamaha WaveRunner, model FA 1800-N, US-
YAMA1141L314.

_____ 1964 Cadillac DeVille, bearing VIN 64F14244B.

- e. That, by a preponderance of the evidence, the following monies and/or properties constitute, or were derived from, proceeds obtained, directly or indirectly, as a result of a violation of the wire fraud offense charged in Count Eight of the Indictment (mark all that apply):

_____ The real property located at 3306 Bay View Drive, Jonesboro,
Georgia.

_____ 2014 GMC Acadia Denali, bearing VIN 1GKKRTKD8EJ138259.

_____ 2014 Yamaha WaveRunner, model VX1800A-NB, US-
YAMA3116J314.

_____ 2013 Yamaha WaveRunner, model SJ700, JP-YAMH0089E313.

_____ 2013 Yamaha WaveRunner, model GX1800A, US-
YAMA3940D313.

_____ 2014 Yamaha WaveRunner, model FA 1800-N, US-
YAMA1141L314.

_____ 1964 Cadillac DeVille, bearing VIN 64F14244B.

- f. That, by a preponderance of the evidence, the following monies and/or properties constitute, or were derived from, proceeds obtained, directly or indirectly, as a result of a violation of the wire fraud offense charged in Count Nine of the Indictment (mark all that apply):

_____ The real property located at 3306 Bay View Drive, Jonesboro, Georgia.

_____ 2014 GMC Acadia Denali, bearing VIN 1GKKRTKD8EJ138259.

_____ 2014 Yamaha WaveRunner, model VX1800A-NB, US-YAMA3116J314.

_____ 2013 Yamaha WaveRunner, model SJ700, JP-YAMH0089E313.

_____ 2013 Yamaha WaveRunner, model GX1800A, US-YAMA3940D313.

_____ 2014 Yamaha WaveRunner, model FA 1800-N, US-YAMA1141L314.

_____ 1964 Cadillac DeVille, bearing VIN 64F14244B.

- g. That, by a preponderance of the evidence, the following monies and/or properties constitute, or were derived from, proceeds obtained, directly or indirectly, as a result of a violation of the wire fraud offense charged in Count Ten of the Indictment (mark all that apply):

_____ The real property located at 3306 Bay View Drive, Jonesboro, Georgia.

_____ 2014 GMC Acadia Denali, bearing VIN 1GKKRTKD8EJ138259.

_____ 2014 Yamaha WaveRunner, model VX1800A-NB, US-
YAMA3116J314.

_____ 2013 Yamaha WaveRunner, model SJ700, JP-YAMH0089E313.

_____ 2013 Yamaha WaveRunner, model GX1800A, US-
YAMA3940D313.

_____ 2014 Yamaha WaveRunner, model FA 1800-N, US-
YAMA1141L314.

_____ 1964 Cadillac DeVille, bearing VIN 64F14244B.

II. PROPERTY INVOLVED IN MONEY LAUNDERING

- a. That, by a preponderance of the evidence, the following monies and/or properties are involved in, or are traceable to, property involved in money laundering, as a result of a violation of the money laundering offense charged in Count Four of the Indictment (mark all that apply):

_____ 2014 GMC Acadia Denali, bearing VIN 1GKKRTKD8EJ138259.

_____ 2014 Yamaha WaveRunner, model VX1800A-NB, US-
YAMA3116J314.

_____ 2013 Yamaha WaveRunner, model SJ700, JP-YAMH0089E313.

_____ 2013 Yamaha WaveRunner, model GX1800A, US-
YAMA3940D313.

_____ 2014 Yamaha WaveRunner, model FA 1800-N, US-
YAMA1141L314.

- b. That, by a preponderance of the evidence, the following monies and/or properties are involved in, or are traceable to, property involved in money laundering, as a result of a violation of the money laundering offense charged in Count Five of the Indictment (mark all that apply):

_____ 2014 GMC Acadia Denali, bearing VIN 1GKKRTKD8EJ138259.

_____ 2014 Yamaha WaveRunner, model VX1800A-NB, US-YAMA3116J314.

_____ 2013 Yamaha WaveRunner, model SJ700, JP-YAMH0089E313.

_____ 2013 Yamaha WaveRunner, model GX1800A, US-YAMA3940D313.

_____ 2014 Yamaha WaveRunner, model FA 1800-N, US-YAMA1141L314.

- c. That, by a preponderance of the evidence, the following monies and/or properties are involved in, or are traceable to, property involved in money laundering, as a result of a violation of the money laundering offense charged in Count Six of the Indictment (mark all that apply):

_____ 2014 GMC Acadia Denali, bearing VIN 1GKKRTKD8EJ138259.

_____ 2014 Yamaha WaveRunner, model VX1800A-NB, US-YAMA3116J314.

_____ 2013 Yamaha WaveRunner, model SJ700, JP-YAMH0089E313.

_____ 2013 Yamaha WaveRunner, model GX1800A, US-YAMA3940D313.

_____ 2014 Yamaha WaveRunner, model FA 1800-N, US-
YAMA1141L314.

Dated: _____

Foreperson